

MHLA170000442024



R. C. S. NO.5/2024

Maheboob @ Pasha Mahemud Shaikh
Vs. Hon Executive Engineer, Public
Works Department and other 03

ORDER BELOW EXHIBIT - 5

(Passed on this 22nd *Day of September, 2025*)

The plaintiff has filed application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure seeking interim injunction against defendants submitting that, the plaintiff is in possession of 0H 0.82R (2 Acre 2.02 Gunthas) which is the disputed land out of 1H 93R land situated in Survey No.97 at Ausa. The said land is having four boundaries as under;

Towards eastern side :- Land of Sushilabai Mahadev Shinde and Shashikala Baburao Shinde.

Towards western side :- Latur-Nilanga Road (National Highway No.361).

Towards southern side :- Land of Ameer Mainoddin Bagwan and others.

Towards northern side :- Land of Pandharinath Raju Bansode (Nagraj Petrol Pump).

Above said land situated within above described four boundaries is henceforth known as “**Suit land**”.

2. The plaintiff further submits that, he has purchased 5 Acres land in S.No.97 situated at Ausa on 01.09.1980 by way of sale deed No.1299/1980 from Khaja Abdul Raheman Shaikh. There is Latur-Nilanga road passing through S.No.97. Therefore, 5 acre land of plaintiff is divided into 2 parts. The disputed land ad-

measuring 2 Acres 2 Gunthas is situated towards eastern side of the Latur-Nilanga road. According to the said sale deed M.E.No.2640 is made in the name of plaintiff on 02.10.1980 and it is still in existence in his name. The name of plaintiff is continued in the record of rights as per the 7/12 extract. He is taking benefit from the said disputed suit land. The disputed suit land is the private property of plaintiff and it is an agricultural land. Defendants are not concerned with the said disputed suit land.

3. The plaintiff further submits that, previously Chandsaheb Shaikh was the owner of S.No.97 ad-measuring total area of 32 Acres 23 Gunthas. After his death the said land was divided in between his 3 sons. The land towards southern side ad-measuring 10 Acres 32 Gunthas came to the share of Abdul Raheman Chandsaheb Shaikh. Land ad-measuring 10 Acres 34 Gunthas towards northern side came in the name of Mehetab Chandsab Shaikh. The land ad-measuring 10 Acres 35 Gunthas towards northern side came in the name of Mohamad Chandsab Shaikh. There is south to north road passing from said Survey number. Hence, the land in the said Survey number is divided into 2 parts.

4. After death of Abdul Raheman Chandsaheb Shaikh 10 Acres 34 Gunthas of land came in the name of his son namely Mohamad Khaja Abdul Raheman Shaikh by heirship. He sold 2 Acres 5 Gunthas land out of 10 Acres 34 Gunthas to Abdul Khalek Hajiahmad Saoudagar by way of sale deed No.663/1973. Its four boundaries are more specifically described in para No.7 of the

application. Thereafter, land ad-measuring 3 Acres 29 Gunthas situated towards northern side of 2 Acres 5 Gunthas land was sold to Abdul Khalik Hajiahmad Saoudagar by way of sale deed No.1215/1976. More specifically described in para No.7 of the application. Accordingly Abdul Khalik Hajiahmad Saoudagar became owner of total 5 Acres 34 Gunthas land by way of these two sale deeds. The sale deeds reveals that the Latur-Nilanga road is not in existence near the said land. Thereafter, owner of the land Khaja Abdulraheman Shaikh sold 5 Acres land situated towards western side of the land of Abdul Khalik Hajiahmad Saoudagar to the plaintiff. The name of Khaja Saoudagar is mentioned towards eastern side in the sale deed.

5. Khalik Hajiahmad Saoudagar sold 3 Acres land out of 5 Acres 34 Gunthas to Sushilabai Mahadu Shinde in the year 1983 and 2 Acres 34 Gunthas land to Shevantabai Mahadu Trimukhe. However, instead of showing land of plaintiff towards western side in the sale deed it is purposefully mentioned with malafied intention that, Nilanga-Latur road is passing from western side of the said land. Thereby, they are trying to disposes plaintiff from his land situated near Nilanga-Latur road. Therefore, due to the said dispute Sushilabai Mahadu Shinde has instituted suit bearing R.C.S. No.250/1994 in the AUSA Court for declaration of her ownership and injunction. She has made mother of Maheboob @ Pasha namely Jahedabi as defendant No.1 and Maheboob @ Pasha as defendant No.2. The said suit was decided on 17.08.2000. Thereafter, defendant No. 1 and 2 challenged the decree in appeal R.C.A. No.123/2000 and on 29.01.2004 said appeal was decided

in favour of defendants and Judgment and order of Civil Judge Jr. Division was set-aside. Again 2nd appeal was filed by Sushilabai Mahadu Shinde bearing No.443/2004 before the Honourable High Court Bench at Aurangabad. Its next date is 15.02.2024 for final argument. Furthermore, the plaintiff has filed suit bearing R.C.S. No.565/1997 in the Court of Civil Judge Jr. Division, AUSA against Sushilabai and others. It is subjudiced before the Court. There is dispute regarding the four boundaries of the disputed suit land. Unless the dispute of the boundaries is finally decided defendants cannot create road from the disputed suit land.

6. Already the Government has acquired lands for the construction of Latur-Nilanga road. But the name of plaintiff is not appearing in the acquisition of lands, though his land is acquired. Instead of his name, name of Sushilabai Mahadu Shinde, Shashikala Baburao Shinde and others are included. Therefore, unless second appeal bearing No.443/2004 subjudiced before the Honourable High Court is not decided the amount of compensation cannot be given to any party. Though, appeal No.443/2004 and R.C.S. No.348/2020 is subjudiced before the Honourable High Court and Civil Judge, Sr. Division Latur, Sushilabai Mahadu Shinde and Shevantabai Mahadu Trimukhe are creating complications in disputed suit land by handing over lands situated towards western side of disputed suit land.

7. Though the disputed suit land is private property of the plaintiff, defendants and their employees came on the said disputed suit land on 25.01.2024 and tried to mark the road from

the said disputed suit land. The plaintiffs stopped them from creating such road from disputed suit land as it is an agricultural land. However, the employees of defendants told the plaintiff that already order is issued to construct the road from the said suit land and accordingly they are constructing the road.

8. Thereafter, the plaintiff went in the office of defendants and found that the order issued is regarding creation of road near the Nagraj Petrol Pump. It is not specifically mentioned in the said order that it shall be created from disputed suit land. Therefore, the plaintiff prayed for interim injunction against defendants restraining them from creating any road from disputed suit land.

9. Defendant No. 2 has filed his written statement (Exh.30) denying that the new BT road is passing through the private property which is disputed suit land. The road from Nagraj Petrol Pump to Apsingikar Row House is public road and it is approved by the Collector, Latur. It is sanctioned by the State Government. Chief Executive Officer of the Public Department, Latur has issued work order for the construction of said road. The work of construction of said road is sanctioned legally and according to the order of the State Government. The land involved in the construction of said road is a Government land according to the record kept in the office of Defendant No.2. Therefore, defendant No. 2 prayed to reject the application.

10. Defendant Nos. 5 to 10 have filed their written statement at Exh. 56. They also filed pursis(Exh.57) alongwith the written statement to consider their written statement (Exh. 56) as say to the application below Exh. 5. Defendant Nos. 5 to 10 denied the contents of the plaint. They submit that, when the plaintiff purchased the suit land in the year 1980 at that time the suit land was in one part and when the plaintiff filed the suit the suit land is divided into two parts which is not explained by the plaintiff in the plaint. It is admitted by defendant Nos. 5 to 10 that, Sushilabai Shinde and Shevantabai Trimukhe have handed over lands owned by them to which the plaintiff is not concerned. According to the directions issued by the Collector, Latur, the road is created from the land according to the layout to which the plaintiff is not concerned. The plaintiff has no right to obstruct the road which is being constructed as per sanction of the State Government of Maharashtra.

11. It is further contended by defendant Nos. 5 to 10 that, defendant No. 5 has purchased plot No. 14 admeasuring 256 square meters situated in Survey No.97 from Bhikulal Warma by way of sale deed bearing No. 2494/2021 dated 29/06/2021. Its mutation entry number is 18554. Its entry is taken in 7/12 extract of the record. This plot is owned by Shushilabai Mahadu Shinde and now defendant No. 5 is the owner of the said plot. Defendant No. 6 has purchased plot No. 13 admeasuring 180 square meters situated in Survey No. 97 at AUSA from Shushilabai Mahadu Shinde by way of sale deed bearing No. 157/1995 on 17/02/1995 and its mutation entry number is 20261. Now defendant No. 6 is the

owner of said plot. Defendant No. 7 has purchased plot No. 5 and 6 together admeasuring 149 square meters situated in Survey No. 97 at AUSA from Bhimashankar Kantappa Mule by way of sale deed bearing No. 2251/2021 on 15/06/2021 and its mutation entry number is 18667. Now defendant No. 7 is the owner of said plot. Defendant No. 8 has purchased plot No. 9 admeasuring 128 square meters situated in Survey No. 97 at AUSA from Jayraj Mahalingappa Karanje and others by way of sale deed bearing No. 3631/2012 on 08/10/2012 and its mutation entry number is 11302. Now defendant No. 8 is the owner of said plot. Defendant No. 9 has purchased plot No. 12 admeasuring 211 square meters situated in Survey No. 97 at AUSA from Mahemudabi Yunus Bagwan and others by way of sale deed bearing No. 440/2009 on 18/09/2009 and its mutation entry number is 70219. Now defendant No. 9 is the owner of said plot. Defendant No. 10 has purchased plot No. 9 admeasuring 148 square meters situated in Survey No. 131 at AUSA from Mukesh Shashikant Apsingikar by way of sale deed bearing No. 3233/2012 on 23/08/2012. Now defendant No. 10 is the owner of said plot.

12. Shushilabai Mahadu Shinde had filed application before the Collector, Latur for the permission of N.A. of land admeasuring 12100 square meters situated in Survey No. 97 at AUSA. Accordingly, the Collector has passed order of N.A. on 06/02/1997 of land admeasuring 12100 square meters situated in Survey No. 97. She also filed application for grant of N.A. permission of the land admeasuring 3686.25 square meters situated in Survey No. 96. Accordingly, the Collector declared the

said land as N.A. on 07/12/2006. Thereafter, the land of Mukesh Apsingikar situated in Survey No. 131 admeasuring 4744.62 square meters is declared as N.A. on 02/03/2012.

13. The disputed road is east-west in direction and said road is being constructed for the use of owners of the houses situated in Survey No. 97 and 131. The said road is being constructed according to the sanctioned layout and permission of the Collector. According to the sale deed bearing No.1028 dated 18/07/1989 the mother of the plaintiff Jahedabi had sold 1 H 7 R land to Pandharinath Raju Bansode out of 6 Acres 34 Gunthas. The four boundaries of the suit land is mentioned in the sale deed shows that, there is Latur-Ausa road and her land is situated towards western side of land of Shevantabai Trimukhe. This shows that, there is land of Shevantabai Trimukeh and Shushilabi Mahadu Shinde towards western side of Latur - Umarga State Highway. According to the measurement No.29/1994 carried out on 09/11/1995 in Survey No. 97 by the order of Tahsildar, Ausa for the purpose of N.A. The measurement map produced on record shows that, there is land of M.I.D.C. situated in Hissa No.1, 3, 5, 6 and 7 in Survey No.97. Hissa No. 5 is of Shushilabai Mahadu Shinde and there is Latur-Umarga road situated towards western side of Hissa No. 5 and 6 in Survey No.97. Hence, it shows that, the previous owner of the land of defendant No.5 to 10 were Shushilabi Mahadu Sinde and Shevantabai Trimukeh and there is Latur-Umarga latur situated towards western side of the said land. The measurement map does not show any land belonging to the plaintiff. Therefore, the burden is on the plaintiff to prove where

actually there land is. The plaintiff is filed the suit and application only to harass defendants. Therefore, defendant Nos. 5 to 10 prayed to reject the application with compensatory cost.

14. Defendant Nos. 1 and 4 failed to file their say. Hence, No say order is passed against them.

15. In view of contentions of the plaintiff asserted in the plaint and denied by defendants in their written statement and say following points arose for my determination and my findings thereon are as under:-

Sr.No.	Points	Findings
1.	Does the plaintiff proved <i>prima-facie</i> case in his favour ?	No.
2.	Does plaintiff proved that, the balance of convenience goes in his favour ?	No.
3.	Does plaintiff proved that, irreparable loss would be caused to him if interim injunction is not granted in his favour ?	No.
4.	What order ?	The application is rejected.

REASONS

16. The plaintiff has filed certified copy of 7/12 extract of Survey No. 97 at Sr.No.1, certified copy of mutation entry No.2640 at Sr.No.2, copy of sale deed bearing No. 1299/1980 at Sr.No.3, application given to Sub-divisional Engineer, P.W.D. at Sr.No.4,

application given to Chief Officer, Municipal Corporation, AUSA at Sr.No.5, copy of sale deed bearing No. 663/1973 at Sr.No.6, copy of sale deed bearing No. 1215/1996 at Sr.No.7, copy of sale deed bearing No. 1187/1983 at Sr.No.8, copy of sale deed bearing No. 1188/1983 at Sr.No.9, copy of judgment passed in R.C.S. No. 250/1994 at Sr.No.10, copy of copy of R.C.A. No. 129/2000 at Sr.No.11, copy of S.A. No.443/2004 filed in Honourable High Court, Bench at Aurangabad at Sr.No.12, copy of S.A. No. 448/2004 and order passed by the Honourable High Court S.A. No.443/2004 filed in Honourable High Court, Bench at Aurangabad at Sr.No.13, copy of plaint filed in the Court of C.J.J.D., AUSA in R.C.S. No. 565/1997 at Sr.No.14, copy of order passed below Exh. 5 and copy of plaint in R.C.S.No.348/2020 filed before the C.J.S.D., Latur at Sr.No.15, copy of sanction and estimate given by P.W.D. at Sr.No.16 with list at Exh.4.

The plaintiff also filed certified copy of Exh. 1 to 5 in R.C.S. No. 1087/2022 at Sr.No.1 and copy of W.P. No.36856/2016 filed in Honourable High Court Bombay, Bench at Aurangabad at Sr.No. 2 with list at Exh. 50. He also filed certified copy of judgment passed in Appeal No. 124/1998 by Deputy Collector at Sr.No. 1, order passed in R.O.R. REV No. 77/1998 by Appar Commissioner at Sr.No.2, copy of W.P. No.6763/2017 at Sr.No. 3, copy of order passed in W.P. 6763/2017 by the Honourable High Court at Sr.No.4, copy of S.A. No.443/2004 filed before the Honourable High Court Bombay Bench at Aurangabad at Sr.No. 5 with list Exh.60.

17. Defendant Nos. 5 to 10 have filed copy of sale deed bearing No. 2494/2019 at Sr.No.1, copy of sale deed bearing No. 157/1995 at Sr.No.2, copy of sale deed bearing No. 2251/2021 at Sr.No.3, copy of sale deed bearing No. 3631/2012 at Sr.No.4, copy of sale deed bearing No. 440/2009 at Sr.No.5, copy of sale deed bearing No. 3233/2012 at Sr.No.6, copy of Mutation Entry No. 12364 at Sr.No.7, copy of Mutation Entry No. 18584 at Sr.No.8, copy of Mutation Entry No. 20261 at Sr.No.9, copy of Mutation Entry No. 18667 at Sr.No.10, 7/12 extract of Survey No. 131 at Sr.No.11, 7/12 extract of Survey No. 97 at Sr.No.12 and photos of disputed road at Sr.No.13.

Defendant Nos. 5 to 10 also filed copy of panchnama dated 09/11/1995 at Sr.No.1 and map of measurement of Survey No. 97 at Sr.No.2 with list at Exh.46. Defendant Nos. 5 to 7 have filed copy of Sale deed bearing No. 1028/1989 with list at Exh.65. Defendant Nos. 5 to 10 have filed true copy of N.A. order at Sr.No.1, true copy of layout map of Survey No. 97 at Sr.No.2, true copy of N.A. order at Sr.No.3, true copy of layout map of Survey No. 131 at Sr.No.4, application submitted to state highway Ministry department in Mantralay on 05/01/2024 at Sr.No.5 with list Exh.63.

AS TO POINT NOS. 1 TO 3 :-

18. Heard learned counsels for both the parties. The learned counsel for the plaintiff argued that, the plaintiff is in possession of the disputed suit land. The 7/12 extract produced on record of the suit land shows that, the plaintiff is in possession of

suit land. The plaintiff has purchased the suit land from Khaja Abdul Raheman Shaikh on 01/09/1980 by way of sale deed bearing registration No.1299/1980. Latur-Nilanga road has went through Survey No. 97. Therefore, the Survey number 97 is divided into two parts. The portion of the land admeasuring 2 Acres 2 Gunthas situated towards eastern side of the Latur-Nilanga road is disputed suit land. According to the sale deed the mutation entry No.2640 dated 02/10/1980 is in the name of plaintiff which is produced on record by the plaintiff. Since then, the plaintiff is in possession of the disputed suit land. Khalid Khaja mohammad Saudagar had sold 3 Acres land out of 5 Acres 34 Gunthas land in Survey No. 97 to Sushilabai Shinde in the year 1983 and 2 Acre 34 Gunthas land to Shevantabai Trimukhe. However, the disputed suit land is in the name of the plaintiff is not shown in the four boundaries described in respective sale deeds only to dispossess the plaintiff from the disputed suit land. There is no specific order of the Collector regarding the BT road passing through the disputed suit land. Defendants are trying to construct the BT road from the disputed suit land which would result in dispossessing plaintiff from the disputed suit land. Therefore, huge loss will be caused to the plaintiff if the interim injunction is not granted in favour of the plaintiff.

19. The learned counsel for the plaintiff further argued that, the plaintiff has proved his *prima-facie* case by filing 7/12 extract, mutation entry extract, sale deed between Abdul Khaled Haji Ahemad Saudagar and Mohammad Khaja Abdul Shaikh, Sushilabai Shinde and Abdul Khalid, Shevantabai Trimukhe and

Abdul Khalek Saudagar, Judgment passed in R.C.S. No. 250/1994, Regular Civil Appeal No. 129/2000, Second Appeal No. 443/2004 and Order passed by the Honourable High Court in the S.A. No.443/2004 and Order passed by the C.J.S.D., Latur. Therefore, the balance of convenience goes in favour of the plaintiff. Hence, learned counsel for the plaintiff prayed that, by allowing the application defendants be temporarily restrained from obstructing and interfering in the peaceful possession of the plaintiff over the disputed suit land and further dispossess the plaintiff from disputed suit land by constructing cement/BT road from the disputed suit land.

20. Learned counsels for defendant Nos.2, 3 and 5 to 10 argued that, the disputed suit land is already acquired by the Government for the Latur-Nilanga road. The compensation amount is already given to the plaintiff. There is no land left with the plaintiff as such. The 7/12 extract produced on record does not prove the possession of the plaintiff over the disputed suit land. The plaintiff has not objected to the Order passed by the Collector, Latur. The sale deeds executed in between Abdul Khaled Haji Ahemad Saudagar and Mohammad Khaja Abdul Shaikh, Sushilabai Shinde and Abdul Khalid, Shevantabai Trimukhe and Abdul Khalek Saudagar shows real four boundaries at the time of execution of sale deeds. The measurement map of Survey No. 97 does not show existence of the disputed suit land in the name of plaintiff. The learned counsels for defendants further argued that, the disputed road is one of the part of infrastructure development which cannot be obstructed by the plaintiff. Therefore, the plaintiff has not

proved his *prima-facie* case, balance of convenience does not go in favour of plaintiff, no irreparable loss will be caused to the plaintiff if the application is rejected. Hence, the learned counsels for defendant Nos. 2, 3 and 5 to 10 prayed to reject the application.

21. Perused documents produced by the plaintiff and defendants. The plaintiff has produced on record 7/12 extract of the disputed suit land and extract of mutation entry No. 2460 of the disputed suit land. The 7/12 extract of Survey No. 97 bears the name of the plaintiff according to the mutation entry No. 2460. The certified copy of sale deed bearing registration No.1299/1980 between plaintiff and Khaja Abdul Khalid shows that, there is land of plaintiff situated towards northern side of the land sold by him to Khaja Abdul Khalek. However, sale deed between Sushilabai and Abdul Kahlek bearing registration No.1187/1983 and sale deed between Shevntabai Trimukhe and Abdul Khalek bearing registration No. 1186/1983 does not show land of plaintiff towards northern side in the description of four boundaries of the property. Therefore, the burden is on the plaintiff to prove his possession and ownership over the disputed suit land. Mere production of 7/12 extract does not prove the possession of the plaintiff over the disputed suit land as it is the settled law that, the 7/12 extract is not the document to prove the ownership or possession. There is question of existence of disputed suit land as it is the contention of defendants that, the disputed suit land is acquired by the government for the construction of Latur-Nilanga Road.

22. In support of their argument the learned counsels for defendant Nos. 5 to 10 have relied on the case of ***Harinder Singh Vs. Joginder Singh Bittu and others, 2009 GoJuris (P&H) 1084***. It is held by the Honourable Punjab and Haryana High Court that,

Code of Civil Procedure- Order 39 Rule 1 and 2- Civil Revision- Application for ad interim injunction- Rejection of application by trial court and appellate court- Plaintiff sought to restrain defendants from demolishing a gate on property claimed as his- Defendants contended the property was a public passage as per Town Planning Scheme- Trial court found plaintiff had not approached with clean hands, concealing facts regarding a show cause notice for demolition against his brother- The appellate court upheld the trial court's decision, emphasizing the discretionary nature of injunctions and the necessity for parties to come to court with clean hands- Held. The rejection of the injunction application was valid and justified, and the revision petition was dismissed.

In the present suit the plaintiff has not proved his *prima-facie* in his favour. More particularly there is doubt regarding the existence of disputed suit land. Therefore, the above discussed case is applicable to the extent of use of desecration of the Court for not granting interim injunction.

23. Considering all the documents produced on record without examining witnesses cannot prove the *prima-facie* case of plaintiff. Thus, there are questions before the Court regarding the existence of the disputed suit land, obstruction and interference caused as alleged by the plaintiff against defendants and whether the BT road is passing through the disputed suit land if the suit

land in existence. These questions cannot be *prima-facily* proved unless the plaintiff examines witnesses to prove the same. It is necessary to consider that, the road is sanctioned by the Government for the benefit of public at large. The existence of the disputed suit land is challenged by defendants. According to the measurement No.29/1994 carried out on 09/11/1995 in Survey No. 97 by the order of Tahsildar, AUSA for the purpose of N.A. The measurement map does not show either disputed suit land or any land belonging to the plaintiff. Therefore, the plaintiff failed to prove his *prima-facie* case. The balance of convenience does not go in favour of the plaintiff. No irreparable loss will be caused to the plaintiff, if the application is not allowed. Hence, I answer point Nos. 1 to 3 in the negative.

AS TO POINT NO. 4:-

24. It is proved in the discussion of point Nos. 1 to 3 that, the plaintiff failed to prove his *prima-facie* case, balance of convenience does not lie in favour of the plaintiff. No irreparable loss will be caused to the plaintiff if the application is rejected. Therefore, the application is liable to be rejected. Hence, in answer to point No. 4, I pass following order :-

ORDER

The application is rejected.

Date:-22.09.2025.
Place:- AUSA.

(P. I. Mokashi)
Civil Judge, Senior Division.
AUSA.